

Appendix A: Authority and Legal Compliance

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Wetland Management Districts Legal Mandate

The Migratory Bird Conservation Act was established on February 18, 1929, (45 Stat. 1222), as amended, 16 (U.S.C. 715d, 715e, 715f, to 715k and 715l to 715r). The Act provides for the acquisition of lands determined to be suitable as an inviolate sanctuary for migratory birds.

The Migratory Bird Hunting Stamp Act of March 16, 1934 was amended in 1958 and authorized the “...acquisition by gift, devise, lease, purchase, or exchange of, small wetland and pothole areas, interest therein, and right-of-way to provide access thereto. Such small areas to be designated as ‘Waterfowl Productions Areas’, may be acquired without regard to the limitations and requirements of the Migratory Bird Conservation Act,...”

“...As Waterfowl Production Areas” subject to “...all of the provisions of such Act...except the inviolate sanctuary provisions....”16 U.S.C. 718(c) (Migratory Bird Hunting and Conservation Stamp).

Mandate for FMHa Easements and Fee title Transfers. ”...for conservation purposes...” 7 U.S.C. at 2002 (Consolidated Farm and Rural Development Act).

Legal Context

In addition to the 1958 Amendment to the Migratory Bird Hunting and Conservation Stamp Act 16 U.S.C. 718 (d) (c) and the National Wildlife Refuge System Improvement Act of 1997, the legal and policy guidance for the operation of national wildlife refuges are contained in the following documents or acts:

The work done by the Fish and Wildlife Service is largely mandated by a number of laws (Acts) and Executive Orders which pertain to the conservation and protection of natural and cultural resources. Those Acts and Executive Orders which are most important in establishing and administering the Wetland Management Districts (Districts) are listed below.

Migratory Bird Hunting and Conservation Stamp Act 16 U.S.C. 718 (d) (c)
National Wildlife Refuge System Improvement Act of 1997
Omnibus Parks and Public Lands Management Act of 1996 (Sec. 305, P.L. 104-333).
Title 50 of the Code of Federal Regulation, Subchapters B and C
Migratory Bird Hunting and Conservation Stamp Act (16 USC 718-718-h).
Migratory Bird Treaty Act of 1918 (16 USC 703-712).
National Environmental Policy Act of 1969 (PL 91-190, 42 USC 4321-4347).
Bald Eagle Protection Act of 1940 (16 USC 668-668d)
American Indian Religious Freedom Act (PL 95-341, [1978], 92 Stat. 42 USC 1996).
Antiquities Act (P.L. 59-209, approved 6/8/1906, 34 Stat. 225, 16 USC 431-433).
Reservoir Salvage Act, 16 USC 469).
Executive Order 13007 – Sacred Sites (5/24/1996).

National Environmental Policy Act of 1969 (NEPA). The purposes of the NEPA are to: declare a national policy which will encourage productive and enjoyable harmony between man and his environment; promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; enrich the understanding of the ecological systems and natural resources important to the Nation; and establish a Council on Environmental Quality.

The Endangered Species Act of 1973, as amended. This Act ensures that projects not affect the continued existence of any endangered or threatened species in the project area or result in destruction or adverse modification of their critical habitats.

Executive Order 11988. E.O. 11988 directs Federal agencies to (1) avoid development in the floodplain unless it is the only practical alternative, (2) reduce the hazards and risks associated with floods, (3) minimize the impact of floods on human safety, health, and welfare, and (4) restore and preserve the natural and beneficial values of the floodplain.

Executive Order 11990. E.O. 11990 directs Federal agencies to (1) minimize destruction, loss, or degradation of wetlands and (2) preserve and enhance the natural and beneficial values of wetlands when a practical alternative exists.

Executive Order 12372 (Intergovernmental Review of Federal Programs). In compliance, the Service will send copies of the Environmental Assessment to State Planning Agencies for review.

Executive Order 12996 (Management and General Public Use of the National Wildlife Refuge System). E.O. 12996 provides directives to the Secretary of the Interior on compatible wildlife-dependent recreational activities (hunting, fishing, wildlife observation, photography, environmental education, and interpretation).

The Archeological Resources Protection Act of 1979. Section 14 of the Archaeological Resources Protection Act of 1979 requires an inventory program of all Federal lands. This Act expands upon the Antiquities Act to protect all archeological sites more than 100 years old on Federal land, and to ensure that archeological investigations on Federal land are performed in the public interest by qualified persons.

Uniform Relocation and Assistance and Real Property Acquisition Policies Act of 1970, as amended. This Act provides for uniform and equitable treatment of persons who sell their homes, businesses, or farms to the Service. The Act requires that any purchase offer be no less than the fair market value of the property.

The National Historic Preservation Act of 1966, as amended; Executive Order 11593 (Protection and Enhancement of the Cultural Environment); and Title 36, Code of Federal Regulations, Part 800 (Protection of Historic Properties). Section 106 of the National Historic Preservation Act of 1966 requires Federal agencies to consider the effects of their undertaking on properties meeting criteria for the National Register of Historic Places. The regulations in 36 CFR Part 800 describe how Federal agencies are to identify historic properties, determine effect on significant historic properties, and mitigate adverse effects. Section 110 of the 1966 Act codifies the salient elements from E.O. 11593, “to ensure that historic preservation is fully integrated into ongoing programs and missions of Federal agencies.” Section 110 also requires each Federal agency to establish a program leading to inventory of all historic properties on its lands.

The Native American Graves Protection and Repatriation Act of 1990. Directs Federal agencies to protect Native American human remains and associated burial items located on or removed from Federal land.

Federal Farmland Protection Policy Act of 1981, as amended. The Act, is intended to minimize the extent to which a project would contribute to the conversion of farmland to nonagricultural uses.

Clean Water Act (Section 401 and 404). Section 404 of the Act is intended to protect access to and quality of the nation's waters by preventing the unnecessary loss of wetlands and other sensitive aquatic areas. Section 401 of the Act requires water quality certification prior to the issuance of a 404 permit and for other activities discharging into a water body.

Rivers and Harbor Act (Section 10 of 1899). Section 10 of this Act regulates the placement of fill in navigable waters of the United States.

Refuge Revenue Sharing Act of 1935, as amended. This act requires revenue sharing provisions to all fee-title ownerships that are administered solely or primarily by the Secretary through the Service.

Migratory Bird Conservation Act of 1929. The Act established the Migratory Bird Conservation Commission which consists of the Secretaries of the Interior (chairman), Agriculture, and Transportation, two members from the House of Representatives, and an ex-officio member from the state in which a project is located. The Commission approves acquisition of land and water, or interests therein, and sets the priorities for acquisition of lands by the Secretary for sanctuaries or for other management purposes. Under this Act, to acquire lands, or interests therein, the state concerned must consent to such acquisition by legislation. Such legislation has been enacted by most states.

Archaeological and Historic Preservation Act of 1974. This Act amends the Reservoir Salvage Act of 1960 to expand its provisions to the preservation of historic and archaeological data in all Federal or federally assisted or licensed construction projects that might otherwise be lost. This Act directs Federal agencies to notify the Secretary of the Interior whenever they find a Federal or federally assisted, licensed or permitted project may cause loss or destruction of significant scientific, prehistoric or archaeological data. Funds may be appropriated, donated and/or transferred for the recovery, protection and preservation of such data.

Fish and Wildlife Act of 1956. This Act initially established the Fish and Wildlife Service under the Assistant Secretary for Fish and Wildlife and a Commissioner for Fish and Wildlife. The Service consisted of the Bureau of Sport Fisheries and Wildlife and a Bureau of Commercial Fisheries, each having a Director. In 1970, the Bureau of Commercial Fisheries was transferred to the Department of Commerce. The Act was amended by Public Law 93-271 to abolish the office of Commissioner and establish the U.S. Fish and Wildlife Service under a Director. Under this Act, the Secretary is authorized to take such steps as may be required for the development, advancement, management, conservation, and protection of fish and wildlife resources including but not limited to research, development of existing facilities, and acquisition by purchase or exchange of land and water or interests therein. The Act also authorizes the Service to accept gifts of real or personal property for its benefit and use in performing its activities and services. Such gifts qualify under Federal income, estate, or gift tax laws as a gift to the United States.

Fish and Wildlife Improvement Act of 1978. This act was passed to improve the administration of fish and wildlife programs and amends several earlier laws including the Refuge Recreation Act, the National Wildlife Refuge System Administration Act, and the Fish and Wildlife Act of 1956. It authorizes the Secretary to accept gifts and bequests of real and personal property on behalf of the United States. It also authorizes the use of volunteers on Service projects and appropriations to carry out a volunteer program.

Land and Water Conservation Fund Act of 1965. This Act provides funding through receipts from the sale of surplus Federal land, appropriations from oil and gas receipts from the outer continental shelf, and other sources for land acquisition under several authorities. Appropriations from the Fund may be used for matching grants to states for outdoor recreation projects and for land acquisition by various Federal agencies, including the Fish and Wildlife Service.

National Wildlife Refuge System Administration Act of 1966. This Act defines the National Wildlife Refuge System as including wildlife refuges, areas for the protection and conservation of fish and wildlife which are threatened with extinction, wildlife ranges, game ranges, wildlife management areas, and waterfowl production areas. The Secretary is authorized to permit any use of an area provided such use is compatible with the major purposes for which such area was established. The purchase consideration for rights-of-way go into the Migratory Bird Conservation Fund for the acquisition of lands. By regulation, up to 40 percent of an area acquired for a migratory bird sanctuary may be opened to migratory bird hunting unless the Secretary finds that the taking of any species of migratory game birds in more than 40 percent of such area would be beneficial to the species. The Act requires an Act of Congress for the divestiture of lands in the system, except (1) lands acquired with Migratory Bird Conservation Commission funds, and (2) lands can be removed from the system by land exchange, or if brought into the system by a cooperative agreement, then pursuant to the terms of the agreement.

Refuge Recreation Act of 1962. This Act authorizes the Secretary of the Interior to administer refuges, hatcheries, and other conservation areas for recreational use, when such uses do not interfere with the areas' primary purposes. It authorizes construction and maintenance of recreational facilities and the acquisition of land for incidental fish and wildlife oriented recreational development or protection of natural resources. It also authorizes the charging of fees for public use.